

# Exhibit X

From: **Paul Kroeger** [pkroeger@raklaw.com](mailto:pkroeger@raklaw.com)   
 Subject: Re: Oyster / Ciena -- 40G products  
 Date: March 22, 2021 at 11:20 AM  
 To: Holley, John [johnholley@paulhastings.com](mailto:johnholley@paulhastings.com)  
 Cc: Jacobs, Blair M. [blairjacobs@paulhastings.com](mailto:blairjacobs@paulhastings.com), Ondrick, Christina A. [christinaondrick@paulhastings.com](mailto:christinaondrick@paulhastings.com), [rak\\_oyster@raklaw.com](mailto:rak_oyster@raklaw.com), Ciena-Oyster [Ciena-Oyster@paulhastings.com](mailto:Ciena-Oyster@paulhastings.com)



John,

Your statement below that Dr. Goossen "failed to provide any infringement analysis" for the 100G WaveLogic 2 is incorrect. Dr. Goossen's Report identifies and discusses the 100G WaveLogic 2 in Paragraph 39. He also notes the WaveLogic 2's substantial similarity to WaveLogic 3 in paragraph 144 of the report. Dr. Goossen cites technical documentation about the 100G WaveLogic 2 product in his infringement analysis including in Paragraph 153, among other places. Accordingly, the references in the report to the WaveLogic 2 refer to the WaveLogic 2 100G product. Oyster continues to accuse this product of infringement.



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On Mar 21, 2021, at 8:14 AM, Holley, John <[johnholley@paulhastings.com](mailto:johnholley@paulhastings.com)> wrote:

Counsel,

Thank you for your response and for confirming that the 40G products need not be addressed in Ciena's expert reports.

Your response does, however, require some clarification. Oyster has previously contended that it accused the 40G products of infringement. Oyster argued it provided infringement contentions covering Ciena's 40G products. Ciena disagreed. The Court agreed with Ciena finding that Oyster's infringement contentions lacked allegations against Ciena's 40G products. To the extent your email below attempts to recast history, we disagree. If when you say the 40G products were "never within the scope of this action," you mean that Oyster attempted to and failed to bring those products into the action, but failed to provide adequate infringement contentions, then we can agree.

Concerning Oyster's reference to Ciena's WaveLogic 2, we must also clarify the record. Ciena understands that Oyster accused Ciena's 100G WaveLogic 2 cards of infringement in this case and that those products were within the scope of Oyster's infringement contentions. Dr. Goossen, however, failed to provide any infringement analysis for those products. We assume your reference below to WaveLogic 2 refers to

all WaveLogic 2 products, including NTK539TAE5, NTK539TBE5, NTK539TCE5, NTK539TDE5, NTK539TEE5, and NTK539TJE5. Those Accused Products are designed differently than the WaveLogic 3 product Dr. Goosen analyzed in his report. Please confirm Oyster is no longer maintaining its infringement allegations against these products. Please further confirm that Mr. Dell's supplemental damages report being served on Monday will remove those products from the damages base.

Regards,  
John

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**From:** Paul Kroeger <[pkroeger@raklaw.com](mailto:pkroeger@raklaw.com)>  
**Sent:** Thursday, March 18, 2021 12:12 AM  
**To:** Holley, John <[johnholley@paulhastings.com](mailto:johnholley@paulhastings.com)>; Jacobs, Blair M. <[blairjacobs@paulhastings.com](mailto:blairjacobs@paulhastings.com)>; Ondrick, Christina A. <[christinaondrick@paulhastings.com](mailto:christinaondrick@paulhastings.com)>  
**Cc:** rak\_oyster <[rak\\_oyster@raklaw.com](mailto:rak_oyster@raklaw.com)>; Ciena-Oyster <[Ciena-Oyster@paulhastings.com](mailto:Ciena-Oyster@paulhastings.com)>  
**Subject:** [EXT] Oyster / Ciena -- 40G products

Counsel,

Following up on our recent discussions, Oyster agrees that the 40G products are not and were never within the scope of this action. Accordingly, you do not need to respond to any of Dr. Goosen's infringement opinions specific to the 4200 platform, WaveLogic 2 and any other 40G products. Likewise, you do not need to respond to any of Mr. Dell's opinions specifically concerning those products. As we have discussed this agreement is contingent on your agreement not to argue that any of these products are non-infringing alternatives.

Thanks,  
<image001.jpg>

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